

Assuming that letter as one of instructions, which Mr. Gibson was required to obey, there would be no doubt of the right of the creditors enumerated in it, to participate equally and ratably in the money collected upon the drafts. That letter undoubtedly put them each and all upon an equality and to give a preference to any one over the rest in case of a deficiency, would not only contravene the plain intent and meaning of the writer, but would defeat the invariable effort of the court to do equal justice to all by a ratable distribution of the fund under its control, when not prevented from so doing by the plain and explicit terms of the instrument with which it has to deal.

The case of *Cross et al vs. Cohen*, 3 *Gill*, 257, illustrates very strongly the desire of chancery in administering funds under its control to give an equal portion to each creditor, and would be decisive of this case if the rights of the parties depended entirely upon the letter. But it appears that contemporaneously with the letter, Mr. Finley gave to each creditor mentioned in it an order on Mr. Gibson to pay the sum due him. The orders are all dated on the same day, 31st of March, 1850, and the only difference in them is that the one in favor of H. Rieman & Sons is payable only out of the proceeds of the drafts on the New York House, whilst those given to the other creditors are payable out of any money to be collected upon the drafts on New York and Baltimore. And the draft drawn on Baltimore having been dishonored and those on New York having been paid, but being inadequate to pay the claims of all the creditors, it is insisted on the part of Rieman & Sons, that they are entitled to a preference over the other creditors, that is, that their entire claim must be paid out of the proceeds of the drafts on New York, and the balance only distributed among the other creditors.

It is urged on their part that they have nothing to do with the letter from Finley to Gibson, that their right to payment rests upon the draft, which was sufficient to operate an equitable assignment of the fund in question, and that by force of it, they are entitled to be paid out of that fund to the exclusion of the other parties.